IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1331/2005
(Rajendra Karnani Vs. Babulal Vaishnav & Anr.)

Date of Order : 13/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Varun Gupta for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. H.M.Saraswat for the non-petitioner No.1.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 27.10.2005 passed by Judicial Magistrate No.2, Jodhpur (for short 'the trial court' hereinafter), whereby the application filed by the petitioner under Section 311 Cr.P.C. was dismissed.

I have heard learned counsel for the parties. Carefully gone through the order impugned and the various order sheets of the trial court commencing from 29.8.2005.

It is contended by learned counsel for the petitioner that the petitioner is facing trial for the offence under Section 497 IPC and the matter was at the stage of evidence before charge. Witness PW-3 Naresh Vaishnav appeared before the

trial court on 29.8.2005, however, the accused petitioner failed to appear on that date and an application on his behalf was filed by his counsel seeking dispensing with personal appearance of the accused petitioner. That application came to be allowed in the presence of counsel for the accused petitioner. PW-3 Naresh Vaishnav made a statement and an opportunity to cross-examine him was provided to the counsel for the accused petitioner, however, counsel for the petitioner stated that his client i.e. the accused petitioner is out of station and therefore, he will cross-examine the witness only in presence of his client.

The trial court noticed that on 6.8.2005 and thereafter on 20.8.2005 witness Naresh Vaishnav appeared and at the request of counsel representing the accused petitioner, the matter was adjourned. It has also come in the order sheets that witness PW-3 Naresh Vaishnav has appeared on various dates and he was to go abroad. At the request of counsel representing the accused petitioner, the cross-examination was deferred right from 6.8.2005; however, on 29.8.2005 the trial court closed the evidence and therefore, the petitioner moved an application under Section 311 Cr.P.C. seeking recalling of witness PW-3 Naresh Vaishnav. The trial court dismissed the application by order dated 27.10.2005 keeping in view the events noticed herein above, however, observed that under sub-section (4) of Section 246 Cr.P.C., it is open for the petitioner to cross-

examine the witness when after charge the witness appears in the Court. That order has been challenged by the petitioner by the instant petition.

The witness PW-3 Naresh Vaishnav appeared repeatedly in the Court and made a statement before the Court. From the order impugned it appears that the trial court taking a lenient view, deferred the cross-examination at the request of counsel representing the accused petitioner on several occasions. From the order, it no where appears as to how the cross-examination of a witness was necessary in the presence of the accused. In the circumstances, therefore, it cannot be said that the order impugned suffers from any error, illegality or perversity. There is nothing on record to show that the order impugned would result in serious miscarriage of justice or abuse of process of any Court. On the contrary, it appears that the witness has been made to appear before the Court repeatedly for no reasonable cause.

The petition has no force and it is therefore, dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

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